IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

MONDAY, THE 5TH MARCH 2007 / 14TH PHALGUNA 1928

Crl.MC.No. 580 of 2007()

CC.561/2005 of J.F.C.M-I, PERINTHALMANNA
CR.NO.474/2005 OF PERINTALMANNA POLICE STATION

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PETITIONER: ACCUSED

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1. HAMZA, S/O.LATE BAPU,
   AGED 60 YEARS, PATTOMTHODI HOUSE,
   PO NATTUKAL, PALAKKAD DISTRICT.

2. KUNHIBEEVI, W/O.HAMZA,
   AGED 50 YEARS, PATTOMTHODI HOUSE,
   P.O.NATTUKAL, PALAKKAD DISTRICT.

3. SAKEENA, D/O.HAMZA,
   AGED 21 YEARS, PATTOMTHODI HOUSE,
   P.O.NATTUKAL, PALAKKAD DISTRICT.

BY ADV. SRI.DEVIDAS.U.K

RESPONDENTS: COMPLAINANT AND STATE

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1. SHAFEENA, D/O.UMMER,
   AGED 19 YEARS, THAMARATH HOUSE,
   PERINTALMANNA P.O., MALAPPURAM DISTRICT.

2. STATE OF KERALA, REPRESENTED BY
   THE SUB INSPECTOR OF POLICE, PERINTALMANNA,
   THROUGH THE PUBLIC PROSECUTOR, HIGH COURT OF
   KERALA, ERNAKULAM.

BY ADV. SRI.P.SAMSUDIN FOR R1
PUBLIC PROSECUTOR SRI.PREEZ

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 05/03/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J

Crl.M.C.No.580 of 2007

Dated this the 5th day of March 2007

O R D E R

The petitioners are accused 2,3 and 4 in a prosecution under Section 498(A) and 406 I.P.C. Cognizance has been taken against the petitioners and the first accused for offences punishable under Section 406 and 498(A) I.P.C. Cognizance was taken on the basis of a final report submitted by the police. The investigation commenced on the basis of a private complaint filed by the first respondent/complainant before the learned Magistrate which was referred to the police under Section 156 (3) Cr.P.C. The first accused is the husband of the first respondent. The petitioners are relatives of the husband.

2. The petitioners have now come before this court with the request that powers under Section 482 Cr.P.C may be invoked to quash C.C.No.561 of 2005 against the petitioners and the first accused pending before the Judicial First Class Magistrate-I, Perinthalmanna. According to the petitioners, disputes have been settled amicably between all the four accused persons and the first respondent herein. Annexure B

agreement has been entered into between the husband and the wife. Divorce has been effected. All outstanding disputes have been settled. It was agreed to withdraw the case. The first respondent has further filed an affidavit, Annexure-C to confirm the settlement and the composition of the offences against all the accused persons arrayed as accused 1 to 4 in C.C.No.561 of 2005.

3. The first respondent has entered appearance through a counsel. The counsel vouches for the signature of the first respondent in the affidavit and also for the fact that Annexure B agreement has been entered into between the first respondent and the first accused.

4. I am satisfied, in these circumstances, that the disputes between all the accused persons and the first respondent herein have been settled amicably and that the first respondent has compounded the alleged offences committed by the petitioners and the co-accused. I am, in these circumstances, satisfied that if legally permissible and necessary, powers under Section 482 Cr.P.C can be invoked. The matrimonial dispute having been settled harmoniously, it is not necessary to permit

this prosecution to continue as an irritant to mar the relationship between the parties.

5. But the offence under Section 498(A) I.P.C is not compoundable. The learned counsel points out that in view of the decision in B.S.Joshi vs. State of Haryana [AIR 2003 SC 1386], the mere fact that Section 320 does not permit, composition of the offence need not stand in the way of this court invoking the powers under Section 498(A) I.P.C. I am satisfied, in the facts and circumstances of this case, that the dictum in B.S.Joshi vs. State of Haryana [AIR 2003 SC 1386] can be safely applied and the proceedings in C.C.No.561/2005 against all the accused persons can be brought to premature termination.

6. In the result, this Criminal Miscellaneous Case is allowed. C.C.No.561/2005 against the four accused persons including the petitioners herein and the first accused is hereby quashed.

(R.BASANT, JUDGE)

jsr

R.BASANT, J

C.R.R.P.No.

ORDER

21ST DAY OF JULY 2006